



# **Freedom of Information Act**

## **FOIA overview PTST**

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*Supported by U.S. General Services Administration*



## **FOIA Background**

“A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both.”

President James Madison, 1822

# FOIA Purpose

“The basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed”.

*NLRB v. Robbins Tire & Rubber Co.*,  
437 U.S. 214, 242 (1978)

# FOIA Overview

- Freedom of Information Act (FOIA) Enacted in 1966
  - 5 U.S.C. § 552
- Department of Justice (DOJ) is Federal Government Lead for FOIA
- GSA Order ADM 5450.161, Freedom of Information Act Delegation of Authority
- Access Statute (Public Interest – Shed light on how an agency performs its mission or duties)
- **Goal is for Access to Agency Records – Not to Answer Questions**

# FOIA Overview

- FOIA establishes the right of public access to General Services Administration (GSA) records and specifically in your case PTST Records.
- Upon receipt of a FOIA request for GSA records, those records must be released unless protected by at least one of the nine (9) categories of exempt information contained in the FOIA.
- Both the FOIA and GSA regulations contain rules and procedures that must be followed.
  - The GSA FOIA Division is here to help you in this process.

# Who Can Make a FOIA Request

- Any person **can** make a request for GSA records
  - Individuals, foreign citizens, partnerships, corporations (including Media outlets), associations and foreign, state or local governments, universities, not for profit organizations, inmates.
- Who **cannot** Make a FOIA Request?
  - Federal agencies and fugitives

# Proper FOIA Requests

For a request to be processed by GSA FOIA it must meet the following conditions:

1. **The request must be provided in writing.**
  - Requests submitted through mail, email, fax or the online FOIAOnline system qualifies as being a written request.
2. **Request “agency records” that exist and can be located in agency files.**
  - “Agency records” are those created or received in the course of conducting agency business, including paper, electronic or other physical forms: They include reports, letters, photographs, recordings, emails, etc.

# Proper FOIA Requests

The following are not considered agency records:

- Physical Objects (such as furniture, wall paintings, etc.)
- Non-tangibles (such as individual's memory or oral communication)
- Personal records of an individual that are:
  - Maintained for the convenience of the employee, and
  - Not subject to record retention and disposal rules
- Private material brought into agency for employee's reference
- Notes created by supervisors and other employees provided they are:
  - Not filed with official records; and
  - Not shared with other employees; and
  - Not required by law, regulation, or custom to be created
  - Not used in the decision making process.



# Proper FOIA Requests

- **FOIA does not require Agencies to:**
  - Answer questions or interrogatories posed as FOIA requests;
  - Issue opinions;
  - Analyze and/or interpret documents for a requester;
  - Create records;
  - Initiate investigations; or
  - Provide statutes, regulations, publications or other documents that are otherwise made available to the public.

# Anticipated PTST FOIA Requests

- GSA will receive FOIA requests regarding PTST activities
  - We do not know how many FOIA requests will be received or the exact topics that will be covered.
- Past Presidential Transition FOIA Requests Topics have most focused around:
  - Budgets and expenses incurred by Presidential Transition and/or inaugural activities.
  - General information and emails regarding the operations of the Presidential Transition activities.

# FOIA Responsibilities

- The vast majority of the FOIA request responsibilities and administrative duties will be handled by the GSA FOIA Division within OAS.
  - As FOIA requests come in, all instructions and required actions for PTST members will be communicated and assistance will be provided by my team.
- PTST members may at times be required to assist my team with identifying and gathering responsive records and working with us to determine what is releasable.

# FOIA Exemptions

- In general, most Federal records and information is releasable, unless it is covered under the nine FOIA exemptions:
  1. Classified
  2. Internal Personnel Rules & Practices
  3. Exempted by Statute
  - 4. Trade Secrets and Commercial or Financial Information that is Privileged or Confidential**
  - 5. Inter-agency or Intra-agency Memorandums (pre-decisional)**
  - 6. Personal Privacy (“clearly unwarranted invasion of personal privacy” i.e. PII)**
  - 7. Law Enforcement Purposes**
  8. Regulation or Supervision of Financial Institutions
  9. Wells

# A word for the Wise

- **Keep your emails professional.**
  - All Federal Government Emails are potentially “FOIA-ble.”
  - Federal Government emails can be, and oftentimes are Federal Records that are released via FOIA request responses.
- GSA can, and does, pull e-mails for a variety of reasons (e.g., FOIA requests, IG requests, Congressional requests, GAO requests).
  - GSA has a right to conduct a search of the GSA e-mail system for responsive records so there is no privacy right with respect to that search and review.
  - The actual content of individual e-mail messages may be covered one of the FOIA nine FOIA exemptions and be properly withheld from public release.

# FOIA Points of Contact

- Travis Lewis, GSA FOIA Director
  - [Travis.Lewis@gsa.gov](mailto:Travis.Lewis@gsa.gov) or (202) 219-3078
- Hyacinth Perrault, GSA FOIA Division, Team Lead and lead on PTST FOIA Requests
  - [Hyacinth.Perrault@gsa.gov](mailto:Hyacinth.Perrault@gsa.gov) or (202) 329-9361
- Duane Smith, Assistant General Counsel, General Law Division, GSA Office of General Counsel
  - [Duane.Smith@gsa.gov](mailto:Duane.Smith@gsa.gov) or (202) 694-2934